

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

No. C08-5197 MHP

DEVINE COMMUNICATIONS INCORPORATED,

Plaintiff(s),

ORDER OF REMAND

vs.

FILKONEK COPORATION, et al.,


Defendant(s).

This action was removed to this court from the Superior Court of California, County of San Francisco, based upon this court's alleged diversity jurisdiction. It is hornbook law that the burden of establishing removal jurisdiction is upon the party seeking to remove and that "the removal statute is strictly construed against removal jurisdiction". See Salveson v. Western States Bankcard Ass'n., 731 F.2d 1423, 1429 (9th Cir. 1984). It is also hornbook law that all defendants who have been served at the time of removal must join in the removal. See Emrich v. Touche Ross & Co., 846 F.3d 1190, 1193 n.1 (and cases cited therein).

In this case the removal was within the time provided by 28 U.S.C. section 1446(b) and a timely motion to remand was made. However, defendant Filkonek Corporation had been served on November 13, 2008, but did not join in the Petition for Removal filed on November 17, 2008. Nor does the petition make any allegation about the service status of defendant Filkonek. Thus, the removal, which is objected to by plaintiff in its motion to remand, is facially deficient and leaves this court without jurisdiction.

1 For the foregoing reasons, and noting that a temporary restraining order has been entered by
2 the Superior Court and that this matter was on calendar in that court for a hearing on whether a
3 preliminary injunction should issue, this action is REMANDED immediately to the Superior Court
4 of California, County of San Francisco, and the Clerk of Court shall transmit immediately a certified
5 copy of this order to the Clerk of the Superior Court.

6
7 Date: November 21, 2008


MARILYN HALL PATEL
Judge
United States District Court
Northern District of California